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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL
FILE

In the Matter of)

Modification of Section 90.627(b))
and Other Provisions of the FCC's)
Regulations Affecting the)
Ownership of Specialized Mobile)
Radio (SMR) Systems Within 40)
Miles of Each Other)

RM - 8030

To: The Commission

COMMENTS OF FLEET CALL, INC.

Fleet Call, Inc.

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August 11, 1992

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COMMENTS OF FLEET CALL, INC.

I. INTRODUCTION

Fleet Call, Inc. ("Fleet Call"), pursuant to Section 1.405 of the Federal Communications Commission's (the "Commission") Rules and Regulations, respectfully files its Comments in the above-captioned proceeding.

Fleet Call is one of the nation's leaders in developing advanced, highly-efficient, wide-area digital mobile communications systems. It conceptualized and is constructing Enhanced Specialized Mobile Radio ("ESMR") systems in six of the largest metropolitan areas in the country.^{1/} These systems incorporate state-of-the-art technology, including digital speech coding, Time Division Multiple Access ("TDMA") transmission and frequency reuse

^{1/} On February 13, 1991, the Commission authorized Fleet Call to construct and operate 800 MHz ESMR systems in Chicago, Dallas, Houston, Los Angeles, New York and San Francisco. See In Re Request of Fleet Call, Inc. for Waiver and Other Relief to Permit Creation of Enhanced Specialized Mobile Radio Systems in Six Markets, 6 FCC Rcd 1533 (1991) (the "Fleet Call Waiver Order"), recon. den. 6 FCC Rcd 6989 (1991).

to yield in excess of 15 times the customer capacity of existing Specialized Mobile Radio ("SMR") systems while providing improved transmission quality and enhanced services. Fleet Call's first ESMR system will be operational in Los Angeles in the summer of 1993.^{2/}

II. BACKGROUND

On May 26, 1992, A&B Electronics, Inc. ("A&B") filed a Petition for Rulemaking (the "Petition") asking the Commission to substantially modify regulations that limit the number of channels SMR operators can accumulate in a geographic area. A&B proposes additions to Section 90.627(b) of the Commission's Rules (the "40 Mile Rule") to permit aggregating "mature" SMR systems and the granting of a system license.^{3/} It also proposes modification of Section 90.627(b)(2) to codify the "aggregate loading concept" articulated by the Commission in recent actions authorizing advanced SMR systems.^{4/}

^{2/} Fleet Call is committed to promoting the nationwide availability of advanced digital SMR mobile communications infrastructure and services. It has proposed that the Commission create "innovator blocks" of unassigned 800 MHz trunked SMR frequencies in 180 Metropolitan Statistical Areas and use auctions to license them for advanced digital systems. These innovator blocks would use spectrum that has lain fallow for over a decade to provide additional services in underserved areas and accelerate the development of a seamless nationwide digital SMR network. See RM - 7985, filed April 22, 1992.

^{3/} In pertinent part, Section 90.627 states that a licensee cannot be authorized an additional trunked system within 40 miles of an existing trunked system unless the existing system is loaded to at least 70 mobile and control stations per channel.

^{4/} See e.g., the Fleet Call Waiver Order, supra.

In support of its Petition, A&B states that its efforts to offer seamless coverage in a number of southwestern states has been thwarted by the 40 Mile Rule.^{5/} It asserts that the Rule seriously inhibits the growth of the SMR industry by limiting opportunities to offer the public wide area service and by limiting capacity for interconnected service. This, it argues, is directly contrary to the Commission's stated intent to authorize larger, more efficient trunked systems, and prevents entrepreneurs from achieving economies of scale through consolidating multiple systems that are loaded to less than 70 units per channel.

A&B also asserts that the Rule inhibits the ability of SMR systems to consolidate and thereby accumulate the number of channels necessary to offer a competitive mobile telecommunications capability. It explains that the 40 Mile Rule prevents SMR entrepreneurs from accumulating sufficient spectrum capacity to justify the expenditures inherent in converting to more efficient digital technology.^{6/} A&B concludes that in all but the largest metropolitan areas, the 40 Mile Rule prevents SMR entrepreneurs from implementing wide area and regional systems.

III. DISCUSSION

As part of the overall SMR regulatory scheme, the 40 Mile Rule has been successful in fostering the growth of SMR services in the most heavily populated markets. Ironically, however, the very rules that assured prompt spectrum use in the largest markets

^{5/} Petition at p. 2.

^{6/} Id. at pp. 4-5.

impede providing SMR services to the public in other markets by inhibiting entrepreneurs from obtaining economically viable spectrum blocks.

As the pioneer in conceiving and constructing wide area ESMR systems, Fleet Call supports the objectives of A&B's Petition. Fleet Call is committed to promoting the nationwide availability of advanced digital SMR infrastructure and services.^{7/} Fleet Call submits, however, that A&B's Petition does not go far enough in overcoming regulatory barriers to implementing wide area advanced SMR systems.

First, the Petition addresses only one rule that inhibits the ability of SMR licensees to meet the public's need for advanced, wide-area private land mobile communications capabilities. It does not address eliminating the rule that limits assignments of 800 MHz trunked channels to five-at-a-time^{8/} and other regulatory "leftovers" from the early days of the SMR industry that frustrate the spectrum aggregation necessary to develop ubiquitous digital wide-area SMR systems.

^{7/} Fleet Call recently proposed that the Commission create "innovator blocks" of unassigned 800 MHz trunked SMR frequencies in 180 Metropolitan Statistical Areas and use auctions to license them for advanced digital systems. These innovator blocks would use spectrum that has lain fallow for over a decade to provide additional and improved SMR services in markets where the rules inhibit the development of advanced, wide area SMR services. Auctioning the innovator blocks would accelerate implementation of advanced SMR technology throughout the nation, thereby promoting development of a seamless, nationwide digital SMR network. See Petition for Rulemaking of Fleet Call, Inc., RM - 7985, filed April 22, 1992.

^{8/} Section 90.621(a)(1)(iv) of the Rules.

Second, A&B's proposal is unnecessarily complex and too restrictive to achieve the objectives underlying the proposal. It would only apply to: (1) assignments involving stations that are no longer within their original license term, thus preventing an entrepreneur from consolidating "underloaded" frequencies unless constructed and operational for five years or more;^{9/} or (2) to a licensee meeting its proposed requirements for and designation as a "system licensee."^{10/} The Petition would require system licensees to at least initially demonstrate that they have been able to build, operate and retain SMR systems for five years or that they have successfully loaded facilities. In short, the proposal offers no relief to new entrants unless they first acquire systems that have been in operation for five years or more.

Fleet Call believes the public interest would be better served by revising the Commission's rules to directly enable bona fide applicants to acquire sufficient spectrum to provide advanced wide area SMR services. Accordingly, A&B's Petition should be evaluated as part of a comprehensive set of SMR rule revisions designed to

^{9/} Petition at p. 12.

^{10/} A&B suggests that a system license could be obtained by any entity accumulating 20 or more constructed channels within a market. The stations comprising the license would have to either be beyond their five-year initial license term, or the licensee would have to demonstrate aggregate loading of 70 units per channel over the system. A system licensee would have to construct any additional channels obtained from the Commission within eight months. A&B would only allow a system licensee to increase its system capacity by five more channels that it has constructed within 40 miles.


achieve this objective.^{11/}

IV. SUMMARY

Fleet Call encourages the Commission to review its private land mobile radio rules and regulations to eliminate provisions and policies that impede the ability of SMR entrepreneurs to provide services desired by private radio customers. The Commission should consider A&B's Petition as part of that process.

Respectfully submitted,

FLEET CALL, INC.

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Dated: August 11, 1992

^{11/} The Petition filed by the National Association of Business and Educational Radio, Inc. to promote wide-area SMR systems should also be considered in such a proceeding as the issues raised therein are linked with those raised by A&B's Petition. See Comments of Fleet Call, Inc. in RM - 8029, filed August 11, 1992.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Comments of Fleet Call, Inc. has been mailed by United States first class mail, postage prepaid, this 11th day of August, 1992, to the following:

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